

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

| | | |
|-------------------------------------|---|--------------------|
| KENNETH R. HALL |) | |
| Claimant |) | |
| VS. |) | |
| |) | |
| WALLACE AND SONS GLASS, INC. |) | Docket No. 213,224 |
| Respondent |) | |
| AND |) | |
| |) | |
| AMERICAN FAMILY INSURANCE |) | |
| Insurance Carrier |) | |

ORDER

Respondent appeals from an Award entered by Administrative Law Judge Bryce D. Benedict on February 24, 1997.

APPEARANCES

Jeffrey E. King of Salina, Kansas, appeared on behalf of respondent and its insurance carrier. Although given notice, claimant did not appear.

RECORD AND STIPULATIONS

The Appeals Board has adopted the stipulations listed in the Award and has reviewed and considered the record identified in the Award.

ISSUES

Has claimant established a separate accidental injury arising out of and in the course of his employment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that claimant has not established that he suffered accidental injury arising out of and in the course of his employment and benefits should be denied.

Claimant testified in this case by deposition and stated that he had injured his shoulder while removing a windshield from a customer's vehicle on the morning of April 23, 1996. Claimant was represented by counsel at his own deposition and at the deposition of Heinz C. Wallace, president of respondent corporation. Claimant's counsel thereafter withdrew. Respondent took the deposition of Charles Roepke and noticed the claimant for regular hearing. Claimant did not appear either in person or by representative at either the deposition of Mr. Roepke or the regular hearing.

Mr. Wallace testified at his deposition that he became suspicious of claimant's allegations because claimant had come to work on the day of the accident wearing a coat to cover scratches which the claimant stated were caused by his dog. Claimant had also performed some work after the alleged accident which Mr. Wallace felt was inconsistent with the alleged accident. Mr. Wallace testified that he then contacted the customer, Mr. Roepke, to ask about the accident. According to Mr. Wallace, Mr. Roepke stated that claimant informed him he had injured his shoulder the night before.

Mr. Roepke's deposition testimony differs somewhat from Mr. Wallace's statements. Mr. Roepke does state that claimant told him that he had injured his shoulder. According to Mr. Roepke, claimant advised him of the injury as he was removing the trim at the beginning of the job. Claimant alleges that he injured his shoulder after the trim was removed and as he was taking out the glass. Mr. Roepke also testified that he was in the general area where claimant was working throughout the work. He acknowledged he did not observe all of it, but he did not see or hear any accidents such as the one claimant described. Claimant did not mention to him any accident occurring at the time he replaced the windshield. The record contains no medical evidence to support the claim of an injury or to show the extent of any injury.

On balance, the Appeals Board concludes that the evidence does not meet claimant's burden of establishing by a preponderance of the credible evidence that he sustained an injury arising out of and in the course of his employment.

AWARD

WHEREFORE, the Appeals Board finds that the Award entered by Administrative Law Judge Bryce D. Benedict, dated February 24, 1997, should be, and the same is hereby, reversed. Claimant's application for benefits is denied.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeffrey E. King, Salina, KS
 Kenneth R. Hall, Junction City, KS
 Bryce D. Benedict, Administrative Law Judge
 Philip S. Harness, Director